



U.S. Citizenship
and Immigration
Services

[Handwritten signature]

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: **APR 26 2004**

IN RE:

Petitioner:
Beneficiary:

[Redacted]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

Self-represented

PUBLIC COPY

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Cindy N. Honey for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Dominican Republic who is seeking classification as a special immigrant, pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a citizen of the United States.

The director determined that the petitioner failed to establish eligibility for the benefit sought because her spouse was deceased on December 17, 1995, and she had not been a bona fide spouse of a United States citizen within the past two years as required. The director, therefore, denied the petition.

On appeal, the petitioner asserts that she had filed for INS [now Citizenship and Immigration Services (CIS)] action as a battered spouse before the Honorable Judge [REDACTED] and pursuant to the judge's ruling of February 22, 1999. The petitioner states that she initially filed a petition on September 27, 1996, under section 204.2(b), file number EAC-97-001-50637, and appeal number EAC-97-029-50183, and that she provided information of abuses while living together with her spouse before his death.

8 C.F.R. § 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child¹; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

¹ Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000), Section 1503(b), amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a U.S. citizen is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(b), 114 Stat. at 1520-21.

The Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, shows that the petitioner entered the United States as a visitor on January 5, 1993. The petitioner married her United States citizen spouse on January 19, 1995 at Bronx, New York. The petitioner's spouse died on December 17, 1995. On June 19, 2002, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse during their marriage.

8 C.F.R. § 204.2(c)(1)(ii) states, in pertinent part:

The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition.

On October 28, 2000, the President approved the enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A) of the Act to read, in pertinent part, as follows:

(iii)(I) Any alien who is described in subclause (II) may file a petition with the Attorney General [now the Secretary of the Department of Homeland Security (the Secretary)] under this clause for classification of the Alien (and any child of the alien) if the alien demonstrates to the Attorney General [the Secretary] that...

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this paragraph is an alien...

(aa) (AA) who is the spouse of a citizen of the United States;

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and...

(aaa) whose spouse died within the past 2 years...

The record reflects that the petitioner and her citizen spouse (Fernando Abreu) were married on January 19, 1995. Mr. [REDACTED] died on December 17, 1995. On June 19, 2002, the petitioner filed the Form I-360 petition. The director noted that the petitioner had not been a bona fide spouse of a United States citizen within the past two years as required. He maintained that there is no provision of law whereby an alien may self-petition based on a former spousal relationship when more than two years have passed from the date her spouse was deceased and the date of filing of the I-360 self-petition. The director is correct in his conclusion.

The petitioner claims that she originally filed a Form I-360 petition on September 27, 1996, and that she subsequently filed for CIS action as a battered spouse before an immigration judge, as shown in the judge's ruling of February 2, 1999. She asserts that the case commenced within two years of her spouse's death.

The record reflects that on September 27, 1996, under file number EAC-97-001-50637, the petitioner filed Form I-360 as the "widow(er) of a U.S. citizen who died within the past 2 years." On October 24, 1996, the director denied the petition after determining that the petitioner was ineligible to be classified as the widow of a United States citizen because she was not married to Mr. [REDACTED] for at least two years prior to his death.

On November 7, 1996, the petitioner appealed the director's decision to the Board of Immigration Appeals (BIA). On June 19, 1997, the BIA dismissed the appeal. On May 30, 1997, a Form I-852, Notice to Appear, was issued, pursuant to section 237(a)(1)(B) of the Act, in that after admission as a nonimmigrant under section 101(a)(15) of the Act, the petitioner remained in the United States for a time longer than permitted. In removal proceedings on October 30, 1997, the petitioner was granted time to prepare and file appropriate forms of relief. The petitioner subsequently filed Form EOIR-42B, Application for Cancellation of Removal, on December 29, 1997, based on a claim that she had been battered or subjected to extreme cruelty by her United States citizen spouse. At the continued removal proceedings hearing on November 5, 1998, the judge noted that the petitioner was seeking cancellation of removal under the battered spouse provision, and that the application for that form of relief (Form EOIR-42B) was filed by the petitioner. It is noted that this form was the application the petitioner filed with the immigration court, and not the Form I-360 as claimed by the petitioner on appeal.

At the final hearing on February 22, 1999, the judge determined that she was unable to find that the petitioner had demonstrated two of the essential elements to show that she was eligible for cancellation of removal, in that she had not established battery or extreme cruelty, and she had not shown "extreme hardship" as required by the statute. The judge, therefore, denied the application for cancellation of removal and granted the petitioner voluntary departure on or before April 22, 1999. The petitioner subsequently appealed the decision of the immigration judge to the BIA. On June 28, 2002, the BIA affirmed the judge's decision, and permitted the petitioner to voluntarily depart from the United States, without expense to the Government, within 30 days of the date of the BIA's order. The petitioner then filed a motion to reopen or to reconsider on July 17, 2002. The BIA denied this motion on September 6, 2002.

The record in this case shows that the petitioner's spouse died on December 17, 1995. The petitioner filed the Form I-360 petition on June 19, 2002, more than six years later. Accordingly, the petitioner is statutorily ineligible for the benefit sought pursuant to 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.